

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONALD BLACKBEY,)	
)	8:04cv48
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	
)	
ROBERT HOUSTON, et al.,)	
)	
Defendants.)	

This matter is before the court on the following pending motions: (1) filing no. 64, the Motion for Summary Judgment filed by defendants-Wheeler, Merrill, Houston, and Shelby; (2) filing no. 97, the "Motion to Receive Care Once I Leave Prison on July 21, 2005" filed by the plaintiff, Donald Blackbey; (3) filing no. 98, the plaintiff's Motion to Stay All Proceedings; and (4) filing no. 99, the Motion to Extend Final Progression Order Dates filed by defendants-Wheeler, Merrill, Houston, and Shelby. In filing no. 98, the plaintiff moves for a stay of all proceedings in this case until October 3, 2005 as he is presently confined in the hospital of the Nebraska State Penitentiary because of severe back pain. The plaintiff expects to be released from prison on July 21, 2005, after which he will be better able to prosecute this action or obtain an attorney.

In filing no. 99, defendants-Wheeler, Merrill, Houston, and Shelby state that they have no objection to the stay requested by the plaintiff. The defendants also represent that counsel for the remaining defendant, Dr. Gensler, has no objection to a stay. However, the defendants request an extension of the deadlines established in the court's progression order (filing no. 44). This court has previously granted various extensions of time. The court has also issued a series of orders directing the plaintiff to adhere to the amended schedule established by the court. A stay of proceedings until October 3, 2005 is too long, particularly as the plaintiff will be released from prison months before that date. However, in light of the agreement among the parties, I will grant limited relief from the schedule of progression previously set in this case.

Therefore, this case will be stayed for all purposes until August 31, 2005. To that extent, filing no. 98, the plaintiff's Motion to Stay All Proceedings will be granted. Accordingly, filing no. 64, the defendants' Motion for Summary Judgment will be denied, without prejudice to reassertion after August 31, 2005. Filing no. 99, the defendants' Motion to Extend Final Progression Order Dates, will be granted. Filing no. 97, the plaintiff's "Motion to Receive Care Once I Leave Prison on July 21, 2005," must be denied. The plaintiff has not prevailed in this action, and even if he were to prevail in the future, I question whether this court has any authority to grant the relief requested.

THEREFORE, IT IS ORDERED:

1. That filing no. 98, the plaintiff's Motion to Stay All Proceedings, and filing no. 99, the defendants' Motion to Extend Final Progression Order Dates, are granted, and filing no. 44, the court's Final Progression Order is amended as set forth below:

- a. The jury trial set for August 15, 2005 before the undersigned judge is cancelled; the above-entitled case and the companion case No. 8:03cv425 are stayed for all purposes until August 31, 2005;
- b. By no later than August 31, 2005, the plaintiff shall file a written notice informing the court of an address and, if possible, a telephone number where he can be reached; the plaintiff must keep the court informed of his current address at all times while this case is pending; and failure to do so could subject the case to dismissal; if the plaintiff intends to employ an attorney to represent him in this matter, the attorney must enter an appearance by no later than September 30, 2005;
- c. The deadline for motions to dismiss or other motions based on pleadings has expired;
- d. Any motions for summary judgment or partial summary judgment shall be filed by October 17, 2005;
- e. A party shall have twenty (20) calendar days to file materials in response to any other party's motion for summary judgment; and
- f. Dates for the preparation of the final Pretrial Order and trial will be set by further order of the court;

2. That filing no. 64, the defendants' Motion for Summary Judgment, is denied, without prejudice to reassertion after August 31, 2005 but before October 17, 2005; and

3. That filing no. 97, the plaintiff's "Motion to Receive Care Once I Leave Prison on July 21, 2005," is denied.

DATED this 7th day of July, 2005.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge